

# DIRECTIVES

## COMMISSION IMPLEMENTING DIRECTIVE (EU) 2021/971

of 16 June 2021

**amending Annex I to Council Directive 66/401/EEC on the marketing of fodder plant seed, Annex I to Council Directive 66/402/EEC on the marketing of cereal seed, Annex I to Council Directive 2002/54/EC on the marketing of beet seed, Annex I to Council Directive 2002/55/EC on the marketing of vegetable seed and Annex I to Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants, as regards the use of biochemical and molecular techniques**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed <sup>(1)</sup>, and in particular Article 21a thereof,

Having regard to Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed <sup>(2)</sup>, and in particular Article 21b thereof,

Having regard to Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed <sup>(3)</sup>, and in particular Article 27 thereof,

Having regard to Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed <sup>(4)</sup>, and in particular Article 45 thereof,

Having regard to Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants <sup>(5)</sup>, and in particular Article 24 thereof,

Whereas:

- (1) In accordance with Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC, seed of the respective species may only be marketed in the Union if it has been examined and certified officially or under official supervision, in accordance with the rules for certification regarding generation of pre-basic seed, basic seed or certified seed.
- (2) In accordance with Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC, the examination for certification is based on visual phenotypic observation of the crop in the field by the certification authority of each Member State or under its supervision and in official post-control. The aforementioned Directives, however, do not explicitly refer to the use of any other technique to check varietal identity in the field or in post control in the context of certification a fact that may create lack of clarity with regard to its implementation.
- (3) Biochemical and molecular techniques ("BMT") make it possible to indicate information on the genetic structure of living organisms. The use of BMT enables certification authorities to identify the plant variety on the basis of laboratory analysis instead of visual phenotypic observation of the plants in the field.
- (4) BMT in plant breeding and seed testing are developing fast and their use in the seed sector is increasingly important. In the Seed Schemes of the Organisation for Economic Cooperation and Development (OECD) <sup>(6)</sup>, procedures, measures and techniques have been laid down to enable the use of BMT as a supplementary tool for field inspections and control plot testing, when there are doubts as regards the seed varietal identity, for the purposes of phenotypic examination.

<sup>(1)</sup> OJ 125, 11.7.1966, p. 2298.

<sup>(2)</sup> OJ 125, 11.7.1966, p. 2309.

<sup>(3)</sup> OJ L 193, 20.7.2002, p. 12.

<sup>(4)</sup> OJ L 193, 20.7.2002, p. 33.

<sup>(5)</sup> OJ L 193, 20.7.2002, p. 74.

<sup>(6)</sup> OECD Seed Schemes; Rules and Regulation 2021, Common Rules and Regulation 7.4.5, p. 3, <https://www.oecd.org/agriculture/seeds/documents/oecd-seed-schemes-rules-and-regulations.pdf>, and OECD Seed Schemes; Guidelines for control plot tests and field inspection for seed crops, July 2019, Part III, p. 31, <https://www.oecd.org/agriculture/seeds/documents/guidelines-control-plot-and-field-inspection.pdf>

- (5) Bearing in mind that the use of BMT facilitates the further analysis of seed and plants, it is appropriate to amend Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC to explicitly allow the use of BMT as a supplementary method for the examination of the identity of the variety concerned, in case field inspections and official post control have left some doubt. This is necessary in order for Union law to be adapted to the development of scientific and technical knowledge and to align the Union legislation with the applicable international standards incorporated into the OECD Seed Schemes.
- (6) In order to ensure their consistent and systematic application in accordance with the most updated scientific and technical evidence, Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC should only refer to BMTs recognised by the International Union for the Protection of New Varieties of Plants (UPOV), the OECD and the International Seed Testing Association (ISTA), as those organisations set the relevant officially recognised international BMT standards in this respect.
- (7) The relevant Annexes to Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC should therefore be amended accordingly, to ensure clarity that BMT may be also used in case there is still doubt as to the varietal identity of the seed.
- (8) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Amendments to Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC**

Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC are amended as follows:

- (1) Annex I to Directive 66/401/EEC is amended in accordance with Part A of the Annex to this Directive;
- (2) Annex I to Directive 66/402/EEC is amended in accordance with Part B of the Annex to this Directive;
- (3) Annex I to Directive 2002/54/EC is amended in accordance with Part C of the Annex to this Directive;
- (4) Annex I to Directive 2002/55/EC is amended in accordance with Part D of the Annex to this Directive;
- (5) Annex I to Directive 2002/57/EC is amended in accordance with Part E of the Annex to this Directive.

#### *Article 2*

#### **Transposition**

1. Member States shall adopt and publish, by 31 August 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 September 2022.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

#### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 4***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 16 June 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

**Amendments to Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC, as referred to in Article 1**

## PART A

**Amendment to Annex I to Directive 66/401/EEC**

In Annex I to Directive 66/401/EEC, the following point 7 is added:

- ‘7. In the case where, following the implementation of points 4 and 6, there is still doubt as to the varietal identity of the seed, the certification authority may use, for the examination of that identity, an internationally recognised and reproducible biochemical or molecular technique, in accordance with the applicable international standards.’

## PART B

**Amendment to Annex I to Directive 66/402/EEC**

In Annex I to Directive 66/402/EEC, the following point 8 is added:

- ‘8. In the case where, following the implementation of points 3 and 7, there is still doubt as to the varietal identity of the seed, the certification authority may use, for the examination of that identity, an internationally recognised and reproducible biochemical or molecular technique, in accordance with the applicable international standards.’

## PART C

**Amendment to Annex I to Directive 2002/54/EC**

In Part A. Crop of Annex I to Directive 2002/54/EC, the following point 5a is inserted between points 5 and 6:

- ‘5a. In the case where, following the implementation of points 2 to 5, there is still doubt as to the varietal identity of the seed, the certification authority may use, for the examination of that identity, an internationally recognised and reproducible biochemical or molecular technique, in accordance with the applicable international standards.’

## PART D

**Amendment to Annex I to Directive 2002/55/EC**

In Annex I to Directive 2002/55/EC, the following point 3a is inserted between points 3 and 4:

- ‘3a. In the case where, following the implementation of points 1, 2 and 3, there is still doubt as to the varietal identity of the seed, the certification authority may use, for the examination of that identity, an internationally recognised and reproducible biochemical or molecular technique, in accordance with the applicable international standards.’

## PART E

**Amendment to Annex I to Directive 2002/57/EC**

In Annex I to Directive 2002/57/EC, the following point 3a is inserted between points 3 and 4:

- ‘3a. In the case where, following the implementation of points 1 and 3, there is still doubt left as to the varietal identity of the seed, the certification authority may use, for the examination of that identity, an internationally recognised and reproducible biochemical or molecular technique, in accordance with the applicable international standards.’
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